

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION	DOCKET NO. FCU-02-24
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**ORDER DENYING MOTION TO DISMISS AND
ESTABLISHING PROCEDURAL SCHEDULE**

(Issued April 7, 2003)

On December 2, 2002, the Emergency Management Division of the Iowa Department of Public Defense (EMD) filed an informal complaint with the Utilities Board (Board) against Qwest Corporation (Qwest). The filing has been identified as Docket No. FCU-02-24. In its complaint, EMD contends that the rate currently being assessed to EMD by Qwest for wireless E911 services of \$8.57 per trunk is unreasonable. On December 16, 2002, the Board issued an order docketing EMD's complaint and requesting a response from Qwest.

On January 15, 2003, Qwest filed a response to EMD's complaint. Also on January 15, 2003, Qwest filed a motion to dismiss this proceeding. In support of its motion, Qwest contends that given the existence of a contract that was bargained for and accepted by EMD through a statewide bid process, EMD should not be allowed to use the Board to modify that contract.

On February 13, 2003, EMD filed a resistance to Qwest's motion, stating that it is not seeking Board review of the existing contract with Qwest. Rather, EMD states that it is seeking a review of the reasonableness of the tariff rate for incoming wireless E911 trunk lines under the current circumstances. EMD suggests that the

question at issue in this proceeding is whether the tariff rate reasonably reflects the cost of providing this service and that the Board must move forward with this proceeding and examine current cost data.

A question has been raised by this proceeding as to whether the current tariff rate for Qwest's wireless E911 services reasonably reflects the cost of providing service. The Board has the appropriate jurisdiction to investigate this issue pursuant to Iowa Code § 476.4 (2003). Moreover, the General Terms section of the service agreement between Qwest and EMD provides:

USWC provides Service in accordance with the applicable Tariff, Price List, and/or Catalog ("Tariff") which governs Service in the state Service is provided and is incorporated herein by this reference. Where any term or condition of this Agreement and/or Service Schedule(s) conflicts with the Tariff, the then current Tariff shall prevail.

Exhibit #1, Qwest Motion to Dismiss, page 1, ¶ 1. The Board finds that this paragraph contemplates a situation where the tariff rates for wireless E911 services may change during the term of the contract. The Board's review of the current tariff rate for incoming wireless E911 trunk lines is not an action inconsistent with the contract language. Therefore, the Board will deny Qwest's motion to dismiss this proceeding and establish a procedural schedule.

IT IS THEREFORE ORDERED:

1. The motion to dismiss filed by Qwest Corporation on January 15, 2003, is denied as described in this order.
2. The following procedural schedule is established for this proceeding:

a. Qwest is directed to submit any direct testimony, with workpapers and exhibits supporting its wireless E911 service costs, on or before May 12, 2003.

b. The Emergency Management Division and any interveners aligned with EMD shall file any prepared direct testimony, with supporting exhibits and workpapers, on or before June 16, 2003.

c. Qwest and any interveners aligned with Qwest shall file any responsive testimony, with supporting exhibits and workpapers, on or before July 14, 2003.

d. EMD and any interveners aligned with EMD shall file any rebuttal testimony, with supporting exhibits and workpapers, on or before August 4, 2003.

e. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 10 a.m. on August 26, 2003, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made.

f. Any party desiring to file a brief may do so on or before September 8, 2003.

3. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record five days after filing. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of hearing.

6. Pursuant to 199 IAC 7.7(2) and (11), the time for filing responses or objections to data requests and motions will be shortened to five days from the date the motion is filed or the data request is served. All data requests and motions should be served by facsimile transfer or by electronic mail, in addition to United States mail.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 7th day of April, 2003.